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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues  
13 Against:

14 **ERIN MARIE MCCARTIN,**  
15 **aka ERIN MARIA SHARBAUGH**

16 Respondent.

Case No. 2012-463

**DEFAULT DECISION AND ORDER**

[Gov. Code, § 11520]

17 **FINDINGS OF FACT**

18 1. On or about February 22, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her  
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
20 of Consumer Affairs, filed Statement of Issues No. 2012-463 against Erin Marie McCartin, also  
21 known as Erin Maria Sharbaugh (Respondent) before the Board of Registered Nursing.

22 2. On or about November 2, 2010, Respondent filed an application dated October 10,  
23 2010, with the Board of Registered Nursing to obtain a Registered Nurse License.

24 3. On or about October 3, 2011, the Board issued a letter denying Respondent's  
25 application for a Registered Nurse License. On or about November 7, 2011, Respondent  
26 appealed the Board's denial of her application.

27 4. On or about February 23, 2012, an employee of the Department of Justice served by  
28 Certified and First Class Mail a copy of the Statement of Issues No. 2012-463, Statement to  
Respondent, Request for Discovery, Government Code sections 11507.5, 11507.6, and 11507.7,

1 and Notice from Respondent/Applicant to Respondent's address on the application form. The  
2 Statement of Issues is attached as Exhibit A, and is incorporated herein by reference.

3 5. Service of the Statement of Issues was effective as a matter of law under the  
4 provisions of Government Code section 11505, subdivision (c)

5 6. On or about March 28, 2012, Respondent filed a Notice of Withdrawal of Request for  
6 Hearing.

7 7. Business and Professions Code section 118 states, in pertinent part:

8 (a) The withdrawal of an application for a license after it has been filed with a  
9 board in the department shall not, unless the board has consented in writing to such  
10 withdrawal, deprive the board of its authority to institute or continue a proceeding  
against the applicant for the denial of the license upon any ground provided by law or  
to enter an order denying the license upon any such ground.

11 8. Government Code section 11506 states, in pertinent part:

12 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
13 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
14 of the accusation not expressly admitted. Failure to file a notice of defense shall  
constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
may nevertheless grant a hearing.

15 9. California Government Code section 11520 states, in pertinent part:

16 (a) If the respondent either fails to file a notice of defense or to appear at the  
17 hearing, the agency may take action based upon the respondent's express admissions  
18 or upon other evidence and affidavits may be used as evidence without any notice to  
19 respondent; and where the burden of proof is on the respondent to establish that the  
respondent is entitled to the agency action sought, the agency may act without taking  
evidence.

20 10. Pursuant to its authority under Government Code section 11520, the Board finds  
21 Respondent is in default. The Board will take action without further hearing based upon the  
22 allegations set forth in the Statement of Issues No. 2012-463, as well as Respondent's withdrawal  
23 of her appeal of the denial of her application.

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1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Erin Marie McCartin has  
3 subjected her application for a Registered Nurse License to denial.

4 2. Service of Statement of Issues No. 2012-463 and related documents was proper and  
5 in accordance with the law.

6 3. The agency has jurisdiction to adjudicate this case by default.

7 4. The Board of Registered Nursing is authorized to deny Respondent's application for  
8 licensure based upon the following violations alleged in the Statement of Issues:

9 a. Respondent's application is subject to denial under sections 480,  
10 subdivisions (a)(1) and (a)(3)(A) of the Code in that on or about July 28, 2011, in a criminal  
11 proceeding entitled *People of the State of California v. Erin Maria Sharbaugh*, in Riverside  
12 County Superior Court, case number INM10006796, Respondent was convicted on her plea of  
13 guilty to violating Penal Code section 647, subdivision (f), public intoxication, a misdemeanor, a  
14 crime substantially related to the qualifications, duties, and functions of a registered nurse. Said  
15 conviction would be a ground for discipline under section 2761, subdivision (f) of the Code for a  
16 licensed registered nurse.

17 b. Respondent's application is subject to denial under sections 480,  
18 subdivision (a)(3)(A) of the Code in that Respondent used alcoholic beverages to an extent or in a  
19 manner that was dangerous and injurious to herself or to the public, and would be a ground for  
20 discipline under section 2762, subdivision (b) of the Code for a licensed registered nurse.

21 c. Respondent's application is subject to denial under sections 480,  
22 subdivision (a)(3)(A) of the Code in that on or about July 28, 2011, Respondent was convicted of  
23 a criminal offense involving the consumption of alcohol, conduct that would be a ground for  
24 discipline under section 2762, subdivision (c) of the Code for a licensed registered nurse.

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26  
27 Attachment:

28 Exhibit A: Statement of Issues No. 2012-463

**BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues  
Against:

**ERIN MARIE MCCARTIN,  
aka ERIN MARIA SHARBAUGH**

Respondent.

Case No. 2012-463

**DECISION AND ORDER**

IT IS SO ORDERED that the application for Registered Nurse License, filed by Respondent Erin Marie McCartin, also known as Erin Maria Sharbaugh, is denied.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on August 31, 2012

It is so ORDERED August 3, 2012

*Raymond Mallet*

\_\_\_\_\_  
FOR THE BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS

## Exhibit A

Statement of Issues No. 2012-463

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 State Bar No. 101336  
AMANDA DODDS  
4 Senior Legal Analyst  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2141  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

Case No. **2012-463**

13 **ERIN MARIE MCCARTIN,**  
14 **aka ERIN MARIA SHARBAUGH**  
12426 Alcorn Drive  
Victorville, CA 92392

**STATEMENT OF ISSUES**

15  
16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
21 her official capacity as the Interim Executive Officer of the Board of Registered Nursing,  
22 Department of Consumer Affairs.

23 2. On or about November 2, 2010, the Board of Registered Nursing received an  
24 application for a Registered Nurse License from Erin Marie McCartin, also known as Erin Maria  
25 Sharbaugh (Respondent). On or about October 10, 2010, Erin Marie McCartin certified under  
26 penalty of perjury to the truthfulness of all statements, answers, and representations in the  
27 application. The Board denied the application on October 3, 2011.

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## JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

## STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3)(A) Done any act that if done by a licentiate of the business or profession in  
2 question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the crime  
4 or act is substantially related to the qualifications, functions, or duties of the business  
5 or profession for which application is made.

6 (b) Notwithstanding any other provision of this code, no person shall be denied  
7 a license solely on the basis that he or she has been convicted of a felony if he or she  
8 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with  
9 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been  
10 convicted of a misdemeanor if he or she has met all applicable requirements of the  
11 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a  
12 person when considering the denial of a license under subdivision (a) of Section 482.

13 (c) A board may deny a license regulated by this code on the ground that the  
14 applicant knowingly made a false statement of fact required to be revealed in the  
15 application for the license.

16 7. Section 493 of the Code states:

17 Notwithstanding any other provision of law, in a proceeding conducted by a  
18 board within the department pursuant to law to deny an application for a license or to  
19 suspend or revoke a license or otherwise take disciplinary action against a person who  
20 holds a license, upon the ground that the applicant or the licensee has been convicted  
21 of a crime substantially related to the qualifications, functions, and duties of the  
22 licensee in question, the record of conviction of the crime shall be conclusive  
23 evidence of the fact that the conviction occurred, but only of that fact, and the board  
24 may inquire into the circumstances surrounding the commission of the crime in order  
25 to fix the degree of discipline or to determine if the conviction is substantially related  
26 to the qualifications, functions, and duties of the licensee in question.

27 As used in this section, "license" includes "certificate," "permit," "authority,"  
28 and "registration."

8. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or  
deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the  
following:

....

(f) Conviction of a felony or of any offense substantially related to the  
qualifications, functions, and duties of a registered nurse, in which event the record of  
the conviction shall be conclusive evidence thereof.

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1 (d) Any conviction or act subject to an order of registration pursuant to Section  
2 290 of the Penal Code.

3 12. California Code of Regulations, title 16, section 1445 states:

4 (a) When considering the denial of a license under Section 480 of the code,  
5 the board, in evaluating the rehabilitation of the applicant and his/her present  
6 eligibility for a license will consider the following criteria:

7 (1) The nature and severity of the act(s) or crime(s) under consideration as  
8 grounds for denial.

9 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)  
10 under consideration as grounds for denial which also could be considered as grounds  
11 for denial under Section 480 of the code.

12 (3) The time that has elapsed since commission of the act(s) or crime(s)  
13 referred to in subdivision (1) or (2).

14 (4) The extent to which the applicant has complied with any terms of parole,  
15 probation, restitution, or any other sanctions lawfully imposed against the applicant.

16 (5) Evidence, if any, of rehabilitation submitted by the applicant.

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#### 18 **FIRST CAUSE FOR DENIAL OF APPLICATION**

19 **(July 28, 2011 Criminal Conviction for Public Intoxication on September 8, 2010)**

20 13. Respondent's application is subject to denial under sections 480, subdivision (a)(1)  
21 of the Code in that she was convicted of a crime substantially related to the qualifications, duties,  
22 and functions of a registered nurse. Said conviction would be a ground for discipline under  
23 section 2761, subdivision (f) of the Code for a licensed registered nurse. The circumstances are  
24 as follows:

25 a. On or about July 28, 2011, in a criminal proceeding entitled *People of the*  
26 *State of California v. Erin Maria Sharbaugh*, in Riverside County Superior Court, case number  
27 INM10006796, Respondent was convicted on her plea of guilty to violating Penal Code section  
28 647, subdivision (f), public intoxication, a misdemeanor. The plea dismissed a charge of Penal  
Code section 273a, subdivision (b), willful harm to a child, a misdemeanor.

b. As a result of the conviction, on or about July 28, 2011, Respondent was  
ordered to pay fines and fees in the amount of \$584.45.

1 c. The facts that led to the conviction are that on or about the afternoon of  
2 September 8, 2010, a Riverside County Sheriff's Deputy was dispatched to investigate an  
3 intoxicated female passed out with a small child in the city of Palm Desert. Upon contact with  
4 Respondent, it was observed that there was an empty stroller next to her. Respondent had a  
5 strong odor of an alcoholic beverage emitting from her person, her speech was slurred, her eyes  
6 were bloodshot and watery, and she was unable to stand upright. A neighbor reported that she  
7 had retrieved Respondent's crying infant child from the stroller and returned him to a family  
8 member. Respondent was arrested for public intoxication and child endangerment.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

11 14. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)  
12 of the Code in that on or about September 8, 2010, Respondent used alcoholic beverages to an  
13 extent or in a manner that was dangerous and injurious to herself and the public when she  
14 significantly impaired by alcohol, as described in paragraph 13, above. Such conduct would be a  
15 ground for discipline under section 2762, subdivision (b) of the Code for a licensed registered  
16 nurse.

17 **THIRD CAUSE FOR DENIAL OF APPLICATION**

18 **(Unprofessional Conduct - Conviction of an Alcohol-Related Offense)**

19 15. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)  
20 of the Code in that on or about July 28, 2011, Respondent was convicted of a criminal offense  
21 involving the consumption of alcohol as described in paragraph 13, above. Such conduct would  
22 be a ground for discipline under section 2762, subdivision (c) of the Code for a licensed  
23 registered nurse.

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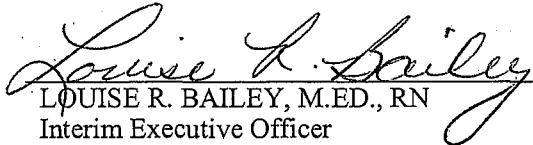
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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
3 and that following the hearing, the Board issue a decision:

- 4 1. Denying the application of Erin Marie McCartin for a Registered Nurse License;  
5 2. Taking such other and further action as deemed necessary and proper.  
6

7  
8 DATED: February 22, 2012

  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
State of California  
Complainant

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